Filed 11/7/14 City of Foster City v. Karnazes CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CITY OF FOSTER CITY,
Plaintiff and Respondent,
v.
ELIZABETH KARNAZES,
Defendant and Appellant.

A138625

(San Mateo County
Super. Ct. No. CIV 476835)

Elizabeth Karnazes appeals from a judgment enforcing a settlement she reached with the City of Foster City (the City) in 2008 to correct hazardous fire, safety, and health conditions on her residential property. Karnazes contends the trial court acted without legal authority because she never violated the agreement in any respect, and erred in particular in finding she breached the settlement agreement by refusing access to her rear yard during an inspection conducted on December 14, 2012. We agree the latter finding was unsupported, and will modify the judgment accordingly. As so modified, we will affirm the judgment.

I. BACKGROUND[1]

A. *The 2008 Settlement Agreement and Order*

The City initiated a code enforcement action against Karnazes in September 2008, alleging the interior of Karnazes's home and garage contained a large amount of debris and clutter which created health, safety, and fire hazards to the public in violation of the City's public nuisance and fire ordinances. The complaint further alleged Karnazes had refused to allow the fire chief or his designee to inspect the premises despite two inspection warrants issued by the court in June and July 2008. The City sought a preliminary and permanent injunction requiring Karnazes to correct "those conditions which constitute a health, safety and fire hazard; specifically by removal of combustible materials stockpiled in the interior of the premises, including the garage," along with other relief. Karnazes, a licensed attorney at the time, represented herself in pro. per. in the action.

In October 2008, the City and Karnazes entered into a settlement agreement, which was subsequently entered as an order of the court in December 2008. Under paragraph 5 of the agreement, Karnazes agreed "to bring the interior of the house into compliance with Foster City Municipal fire, safety, and health codes . . . by June 15, 2009," and to maintain it in compliance with the City's code requirements thereafter.[2] Karnazes agreed to allow the City "reasonable access to the exterior rear fenced yard . . . and to the interior of the house" for compliance inspection purposes. The settlement agreement further provided in paragraph 7 that this case would be stayed by order of the

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[1] Portions of the background section are adapted from this court's decision in a related appeal. (See *City of Foster City v. Karnazes* (July 20, 2012, A128542) [nonpub. opn.] (*Karnazes I*).) We have taken judicial notice of the record on appeal, case files, and our nonpublished opinion in *Karnazes I*.

[2] Paragraph 5 of the settlement agreement stated: "Karnazes is to bring the interior of the house into compliance with Foster City Municipal fire, safety, and health codes, if it is not already in compliance by June 15, 2009, and it shall be maintained in compliance with Foster City Municipal fire, safety, and health codes. An inspection will take place at a mutually agreed upon time on or about June 15, 2009, or earlier mutually agreeable date and time."

court "until the completion of the inspection, on or about June 15, 2009, or unless either party violates the terms of this agreement."[3] The agreement included the following enforcement language: "If this agreement is violated, either party may move the court for enforcement under [Code of Civil Procedure section] 664.6."[4, 5]

B. *Efforts to Enforce Settlement Before* Karnazes I

Karnazes did not bring the house into compliance with City codes by June 15, 2009, or at any time thereafter. The City's efforts to schedule an inspection by June 15, 2009, or at any later time in 2009, proved to be futile. By letter of June 3, 2009, Karnazes unilaterally granted herself a 60-day extension of the June 15 inspection date. Throughout the rest of the year, Karnazes continued to offer excuses and seek extensions. In early December 2009, Karnazes left telephone messages with the City's counsel requesting the City send someone to conduct a "pre-inspection" during the week of December 7, 2009, and tell her what needed to be done for her home to comply with the settlement agreement. When the City agreed to send the fire chief on December 10 for a pre-inspection as she had requested, Karnazes said the pre-inspection could not be done before December 14. When the City tried to schedule the pre-inspection on December 16, Karnazes advised she was leaving town on the 15th for the holidays and

[3] The settlement agreement and stay also encompassed (1) a separate action filed by the City, case No. CIV 463526, concerning the exterior of the house; and (2) a cross-complaint by Karnazes and her son against the City and her next-door neighbors in case No. CIV 463526. Case No. CIV 463526 was apparently dismissed after Karnazes cleaned up her yard. Relative to the exterior of the house, the settlement agreement provided in paragraph 1: "The exterior rear fenced yard of the property . . . is currently in compliance with Foster City Municipal fire, safety, and health codes, and shall be maintained in compliance with Foster City Municipal fire, safety, and health codes."

[4] All further statutory references are to the Code of Civil Procedure.

[5] Section 664.6 provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

would send correspondence with available dates in January. She failed to do so. Two more scheduled pre-inspections were postponed by Karnazes in February and March 2010.

The City fire chief finally inspected Karnazes's home on March 25, 2010, after refusing Karnazes' last-minute attempt to postpone the inspection. The chief sent Karnazes a letter on April 2, 2010, detailing the work she needed to do to comply with the settlement agreement. He reported observing piles of boxes, clothes, and other items filling all major rooms of the house as well as the garage. Piles in some rooms reached more than 10 feet in height. Some rooms were completely inaccessible due to the debris, while other areas were accessible only through narrow paths or by climbing over boxes and bags filled with clothing and other items. The letter explained: "The amount of combustible materials, packed so tightly into the majority of the rooms of the home and the garage, if ignited would result in an extremely hot, fast-spreading fire that would be extremely difficult to suppress." According to the fire chief, responding firefighters would have a difficult time accessing the home to fight such a fire and the combustible materials within would pose a danger to them as well as to neighboring homes. Karnazes denied her house was in violation of any laws.

On March 19, 2010, Karnazes served notice as her own attorney that she would be unavailable from March 30 through April 25, and from June 6 through June 27. Karnazes initially agreed to allow the City to conduct a further inspection in early May 2010 to determine if she had corrected the code violations identified in the fire chief's April 2, 2010 letter. Before the date of that inspection, the City applied to the court for an order amending the settlement agreement to allow photographing and videotaping of the inspection. The court granted the motion and deferred the inspection until May 19, 2010. On May 18, 2010, Karnazes filed a notice of appeal from the court's order, and fire department employees who attempted to inspect Karnazes's home the next day found padlocks on the gates to the entrance of her home and a "No Trespassing" note posted on the gate. The trial court later ruled the appeal stayed the order requiring the May 19 inspection. We ultimately reversed the portion of the trial court's order allowing

the City to photograph and videotape the inspection, and affirmed it in all other respects. (*Karnazes I, supra,* A128542.) The remittitur issued on September 20, 2012.[6]

C. *The City's 2012 Motion to Enforce the Settlement*

On October 2, 2012, the City moved for entry of judgment pursuant to the terms of the 2008 settlement agreement. The City sought immediate entry of a judgment without a further inspection of the property. The City relied on the results of the fire chief's inspection on March 25, 2010, and Karnazes's admissions in court on May 17, 2010, that the house would not pass a final compliance inspection. In the alternative, if Karnazes took the position she was in compliance with paragraph 5 of the settlement agreement as of October 2012, the City requested an immediate inspection of the home.

The hearing on the City's motion began on November 1, 2012. At that time, the trial court ordered Karnazes to bring the house into compliance with municipal fire, safety, and health codes, and to make the entire interior area available for inspection on December 14, 2012, to determine whether it complied with the terms of the December 2008 settlement agreement and order. The court continued the hearing on the motion for entry of judgment to 2:00 p.m. on December 14, 2012, "where the Court will hear testimony as to whether Karnazes has complied with the Settlement Agreement."

The Foster City and City of San Mateo Fire Chief, Michael Keefe, and Jon Mapes, Fire Marshall for the City of Foster City, inspected Karnazes's home on December 14,

[6] We note the record on appeal was filed in *Karnazes I* on August 5, 2010. Over the City's objections, Karnazes requested seven extensions of time to file her opening brief, and finally filed her original opening brief on July 8, 2011. She thereafter sought leave to file an amended opening brief and a corrected amended opening brief, and requested extensions of time to file a reply brief, which she ultimately never filed. Due to these delays, the case was not fully briefed until November 28, 2011. Karnazes then requested oral argument, and asked that it be set after May 15, 2012, which request was denied. She thereafter sought and obtained a continuance of oral argument which was granted with the stipulation that no further continuances would be granted. Oral argument in *Karnazes I* took place on June 14, 2012. Karnazes followed a similar pattern in this appeal, resulting in delays in the designation of the record, and the completion of briefing.

2012. Chief Keefe, Inspector Mapes, Karnazes, and a witness called by Karnazes testified at evidentiary hearings on December 14 and 18, 2012.

Chief Keefe testified there was so much storage behind the front door, it would not open fully. Keefe stated this raised safety concerns regarding access for medical personnel and firefighters. He believed the amount of materials stored throughout the residence posed a significant fire hazard. The excessive amount of combustibles created a threat a fire would spread rapidly and produce large amounts of smoke. There was only a 36-inch pathway to allow for movement in both the family room and dining room. The materials stored in the family room stood approximately five feet high and reached six feet in height along the walls in the dining room and living room, which posed risk of injury to inhabitants in the event of an earthquake. It appeared to consist of boxes on top of furniture and then bags on top of that. The amount of materials stored in the family room and dining room would pose a threat to emergency personnel responding to a fire because they would have a difficult time maneuvering a hose line through the residence and determining if someone was in the home. It also would pose a risk to responding firefighters because the high storage could collapse on the firefighters as they were trying to conduct their search and rescue.

Karnazes refused access to bedroom No. 2 in her home. From the doorway, Chief Keefe confirmed there was a very small pathway to one side of a bed with combustible storage and materials all the way around the room. There was so much storage that, other than the pathway to the bed, there was no way to get anywhere else in the room. The master bedroom was filled with storage four feet high, wall-to-wall, throughout the entire room. There was so much material the inspectors were unable to access the room.

Additionally, there were no smoke detectors attached to the ceilings, which was a violation of the City municipal fire, safety and health codes. Chief Keefe and Inspector Mapes also observed rat or other vermin droppings in the home. Karnazes refused to allow access to inspect the interior of the garage. However, Chief Keefe noted the exterior garage door facing the street was ajar, creating an opportunity for vermin, rodents, or animals to get into the garage. Additionally, the sheer amount of materials

contained in the home also invited an infestation of vermin. Karnazes also refused access to inspect the outside patio/courtyard area where she had garbage stored under a tarp.[7]

Chief Keefe confirmed the condition of Karnazes's home created a fire hazard and the amount of combustible storage in the residence was a violation of the municipal fire code. Inspector Mapes concurred with Chief Keefe's testimony. He testified the condition of the interior and exterior of the home was in violation of Foster City municipal health, safety, and fire codes.

In her own testimony, Karnazes tacitly confirmed her home was not in full compliance with City municipal health, safety, and fire codes. She stated: "[M]any of the rooms . . . are not in violation of the code. It was mainly the last two back bedrooms, which, if the movers hadn't stolen from me and finished their jobs, I believe I could have complied." She promised she could comply if given 45 more days after she returned from her upcoming five-week trip.[8] In her closing, Karnazes proposed the City should give her written notice upon her return from her trip on January 21, of what she needed to do to remedy the situation. She requested another 30 days after that to remedy the situation, and when the 30 days had passed, "we could set a date to reinspect."

The court rejected Karanazes's requests for more time and a further inspection. The court pointed out it had already continued the hearing on the City's motion for judgment for six weeks to give Karnazes an opportunity to put her house into compliance.[9] The court found Karnazes had violated paragraphs 4 and 5 of the December 2008 settlement agreement by (1) refusing reasonable access to her exterior rear yard on December 14, 2012; and (2) failing to bring and maintain the interior of her home into compliance with Foster City municipal fire, safety, and health codes. On

[7] Keefe found the kitchen, stairwell, upstairs bathroom, and bedroom No. 3 to be clear of extraordinary storage or combustibles.

[8] Karnazes filed a "Notice of Unavailability" on the date set for the inspection and hearing, declaring she would be out of the San Francisco Bay Area and unreachable from December 14, 2012 through January 21, 2013.

[9] According to the City, Karnazes told the court on November 1 she could bring her home into compliance by December 14.

February 28, 2013, the court entered judgment for the City pursuant to the December 2008 settlement and ordered Karnazes to bring the exterior rear yard and interior of the house into compliance with the referenced codes, and to maintain them in compliance from and after the date of the judgment.

This timely appeal followed.

II. DISCUSSION

A trial court's "factual findings on a motion to enforce settlement pursuant to section 664.6 are subject to limited appellate review and will not be disturbed if supported by substantial evidence." (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.) However, questions of law on a section 664.6 motion are reviewed de novo. (S*ully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 35.)

In our view, substantial evidence supports the trial court's findings that Karnazes violated paragraph 5 of the 2008 settlement agreement by not bringing the interior of her home into compliance with the City's municipal fire, safety, and health codes by June 15, 2009, or maintaining compliance as of the date of the last inspection, December 14, 2012. The testimony of the City's fire chief and fire marshal were sufficient by themselves to establish that large quantities of combustible materials stored and stacked in most of the rooms of the house and in the garage of the property constituted a fire, safety, and health hazard and a violation of the City's codes. Karnazes's own testimony tacitly conceded she was not in complete compliance with the codes or the settlement agreement. There was also substantial evidence the exterior rear yard had not been maintained in compliance with applicable codes and paragraph 1 of the settlement agreement. Fire Marshal Mapes testified the exterior of the home was in violation of the City's health, safety, and fire codes due to the storage of combustible and rodent-attracting materials outside the home. Chief Keefe testified the exterior as well as the interior created a fire hazard.

Karnazes contends the trial court was biased against her, but she made no timely motion to disqualify the trial judge. A claim of trial court bias on appeal must be

determined from matters appearing in the record. (*Gantner v. Gantner* (1952) 39 Cal.2d 272, 278.) Karnazes's claim is not supported by any citation to the record. For this reason, she has forfeited any contention of trial court bias. In any event, we find no indication of bias in the record. Karnazes's strong disagreement with the trial court's rulings, or even legal error if it is shown, do not establish judicial bias.

Karnazes's principal contention is procedural. She maintains the settlement provided for specific inspection procedures, she complied with those procedures in good faith, and the court was powerless to deviate from them. In particular she insists she was entitled under paragraph 6 of the settlement agreement to written notice of noncompliance *after* the December 14, 2012 inspection and 30 more days after that to remedy the noncompliance.[10] In her view, the December 14, 2012 inspection was the "official inspection . . . initially set for June 15, 2009," as contemplated in paragraph 5. We reject Karnazes's construction of the settlement agreement.

Karnazes agreed to bring the interior of the house into compliance with the City's code requirements by *no later than* June 15, 2009, and to keep it in compliance thereafter. The inspections contemplated in the settlement agreement were not a condition precedent to Karnazes's primary obligation—to mitigate the hazardous conditions on her property by no later than June 15, 2009. They were simply a generous accommodation by the City to give Karnazes one last opportunity, 30 days in duration, to cure her default if she was not in compliance on that date. As we construe the agreement, it was Karnazes's burden to timely cure, not the City's burden to make further accommodations when she made it impossible for the City to inspect her property on or before the June 15, 2009 deadline specified in the settlement agreement. By preventing a timely inspection, Karnazes waived or forfeited the 30-day right-to-cure provision in the settlement.

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[10] Paragraph 6 of the settlement agreement states: "In the event that the exterior rear fenced yard or interior house of the subject property is found not to be in compliance with this agreement, KARNAZES will be given thirty days from service of written notice of the non-compliance to remedy the situation and the CITY OF FOSTER CITY has the right to re-inspect within 45 days of the written notice at a mutually agreeable date and time in the presence of KARNAZES or her authorized representative."

But even assuming for the sake of analysis that the inspection process contemplated in paragraph 6 was not a right to cure but a condition precedent to Karnazes's promise to bring her home into compliance, Karnazes's extreme obstructionist conduct after signing the settlement agreement excused the City from having to fulfill it. This conduct included repeatedly postponing scheduled inspections, unilaterally declaring herself unavailable for weeks at a time on several separate occasions, offering excuse after excuse for her ongoing failure to comply, and deliberately delaying the resolution of her own appeals. It is elemental contract law that Karnazes cannot willfully prevent fulfillment of contract terms and then claim their nonfulfillment excuses her own performance. " '[P]revention of performance by one party to a contract excuses performance by the other [party].' " (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1387.) "A person cannot take advantage of his or her own act or omission to escape liability; if the person prevents or makes impossible the performance or happening of a condition precedent, the condition is excused." (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 821, pp. 910–911, and cases cited, italics omitted.)

Moreover, notwithstanding Karnazes's concerted efforts to thwart completion of the inspection process, she has in fact obtained every material benefit of that process contemplated in the settlement agreement, and then some. Instead of having 30 days to cure her default, she has had over five years, and has yet to address the dangerous conditions in her home—dangers to others as well as herself. Even assuming against all of the evidence that Karnazes needed to have the necessary mitigation measures spelled out in writing, she received such notice on April 2, 2010. Karnazes had from April 2, 2010 to December 14, 2012—*not 30 days but more than two and a half years*—to remedy the conditions cited, yet still failed to do so. Even after the remittitur was filed in *Karnazes I* and the City's motion for judgment was heard, the trial court gave Karnazes another 43 days, from November 1 to December 14, 2012, to cure her default—once again to no effect. In our view, Karnazes has received every consideration promised to

her under the settlement agreement, but has yet to fulfill her end of the bargain. The City was entitled to judgment.

Karnazes also contends the trial court erred in finding she denied the inspectors access to her rear yard on December 14, 2012. She is correct. The court's order requiring the inspection specified only that Karnazes was to make "the entire interior area of her home" available for inspection. It did not address the exterior yard. The testimony at the hearing established that (1) the City did not request access to the rear yard but was able to view the yard from a neighbor's property on December 14; and (2) Karnazes had failed to maintain the rear yard in compliance with municipal fire, safety, and health codes as required by paragraph 1 of the 2008 settlement agreement. The court's unsupported finding does not, however, affect the City's entitlement to a judgment, or the substance of the judgment entered. We will accordingly modify the judgment to excise the references to Karnazes refusing access to the exterior rear yard and to reflect the trial court's implied finding that she violated paragraph 1 of the settlement agreement by failing to maintain the exterior in compliance with municipal fire, safety, and health codes.

III. DISPOSITION

The February 28, 2013 judgment is modified to (1) delete the second sentence of the second paragraph of the judgment and substitute the following sentence therefor: "Specifically, the court finds that Karnazes violated paragraph one of the Settlement Agreement and Order by failing to maintain the exterior rear fenced yard of her property in compliance with Foster City municipal fire, safety, and health codes."; and (2) delete the words "access was denied and" from the last sentence of that paragraph. As so modified, the February 28, 2013 judgment is affirmed.

_____
Margulies, Acting P.J.

We concur:

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Dondero, J.

_____
Banke, J.